

Cars and other vehicles sold by distance means

Guidance on compliance

May 2005

Information on the internet

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1 INTRODUCTION

1.1 The Office of Fair Trading (OFT) has drawn up this guidance to explain what businesses selling cars and other vehicles¹ to consumers under organised distance selling schemes² need to do to comply with requirements of the Consumer Protection (Distance Selling) Regulations 2000³ ('the DSRs'). A distance sale is one made without any face to face contact between supplier and consumer. Internet sales are a good example of an organised distance selling scheme.

Aim of the guidance

- 1.2 This guidance aims to ensure all businesses in the new and second-hand car sales market understand their responsibilities under the DSRs and provide all the required information and rights to consumers in a transparent manner.
- 1.3 The guidance incorporates the amendments made to the legislation by the Department for Trade Industry (DTI) in April 2005.

Scope of the guidance

1.4 The guidance applies to the supply of vehicles - both new and used – sold to consumers by distance means. It also applies to schemes where consumers purchase indirectly, by paying intermediary businesses to source a car from a supplier for them. It deals

¹ In this guidance we will generally refer to cars. However you should note that the regulations apply to the sale of any vehicles sold to the consumer via an organised distance selling scheme.

² Please see Chapter 3 referring to scope of the DSRs.

³ SI 2000/2334.

exclusively with the application of the DSRs and not other legislation that applies to such sales or agency arrangements. Businesses should ensure they are aware of their responsibilities under all relevant UK legislation, including for example under the sale of goods and supply of services, control of misleading advertisements, unfair standard contract terms and the trade descriptions act.

- 1.5 The DTI website provides information relating to the sale and supply of goods and services:
www.dti.gov.uk/ccp/topics1/saleandsupply.htm
- 1.6 Further information relating to the control of misleading advertisements can be found on the OFT website at:
www.offt.gov.uk/Business/Legal/CMAR/default.htm
- 1.7 Further information on the provisions of the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs) can be found at:
www.offt.gov.uk/Business/Legal/UTCC/default.htm
- 1.8 Further information on the trade description act can be found at:
<http://www.dti.gov.uk/ccp/topics1/guide/tda1968.pdf>

Use of the guidance

- 1.9 This guidance is designed to help suppliers of new and used cars and businesses who source cars for consumers. It is also intended to assist other enforcers (such as trading standards services) and consumer advisers. The OFT expects businesses operating in this sector to review their procedures, websites and terms and conditions in the light of the guidance and ensure that contracts made with consumers by distance means comply with the DSRs.
- 1.10 This guidance should not be regarded as a substitute for legal advice or for the DSRs themselves. This guidance reflects OFT's interpretation of the DSRs. It is not intended to be exhaustive and

cannot determine the law, since it is ultimately for the courts to decide whether there has been a breach of the DSRs.

The shape of the guidance

- 1.11 Chapter 2 gives an overview of suppliers' responsibilities under the DSRs and the enforcement role of the OFT and other UK enforcers. Chapter 3 deals with the general responsibilities under the DSRs of suppliers selling cars to consumers. Chapter 4 considers how the DSRs apply to those who source vehicles and/or arrange the sale on a consumer's behalf.

2 THE DISTANCE SELLING REGULATIONS

Overview of the DSRs

2.1 The DSRs implement European Council Directive (97/7/EC) on the protection of consumers in respect of distance contracts. They came into force on 31 October 2000. Legislation giving effect to this Directive protects consumers in all member states of the EU.

2.2 If you sell cars or provide car sourcing services to consumers under distance contracts you have a number of responsibilities. You must:

- before a contract is concluded, provide the consumer with information about yourself, the vehicle you are selling or the service you are providing, the cost of your goods or services and the consumer's rights
- in good time, give the consumer certain information about the contract in writing or other durable form; the precise timescales for provision of this durable information will depend on whether you are selling cars or providing sourcing services
- offer appropriate cancellation rights, and
- keep the consumer informed if you cannot deliver on time and give refunds if they do not want to extend the time for delivery.

2.3 The DSRs do not apply to business to business contracts and sales by distance means that do not form part of an organised distance selling scheme.⁴

⁴ A scheme in which there are standard letters/procedures in place for dealing with distance contracts may be considered an organised scheme.

- 2.4 Details of requirements under the Consumer Protection (Distance Selling) Regulations 2000 as amended by the Consumer Protection (Distance Selling) (Amendment) Regulations 2005 can be found at: www.dti.gov.uk/ccp/topics1/ecommm.htm
The full original text can be seen on the OPSI site: www.opsi.gov.uk/si/si2000/20002334.htm

Enforcement

- 2.5 If you do not comply with the DSRs and deprive consumers of rights, you risk legal challenges in the courts by individual consumers. You may also face regulatory action. The OFT and the other enforcement authorities (trading standards services in Great Britain and the Department of Enterprise, Trade and Investment in Northern Ireland) consider any complaints about breaches of the DSRs. Under the DSRs they have powers to apply to the courts for orders to secure compliance by suppliers.
- 2.6 The Enterprise Act 2002 (Enterprise Act) also provides the OFT and other specified bodies with additional powers to enforce certain consumer protection legislation, through the civil courts, where there is harm to the collective interests of consumers. This legislation includes the DSRs. More information on Part 8 of the Enterprise Act can be found at:
[www.offt.gov.uk/Business/Legal/Enterprise/part + 8.htm](http://www.offt.gov.uk/Business/Legal/Enterprise/part+8.htm)
- 2.7 The OFT is committed to ensuring enforcement action is necessary and proportionate and that businesses are given a reasonable opportunity to put matters right before court action is instigated. The OFT follows the guiding principles set out in the Cabinet Office Enforcement Concordat, details of which can be found at:
www.cabinetoffice.gov.uk/regulation/documents/pst/pdf/concord.pdf

3 DISTANCE SELLING OF CARS TO CONSUMERS

Do the DSRs apply?

- 3.1 The DSRs apply to distance contracts for goods and services, (other than excepted contracts), concluded between a supplier and a consumer under an organised distance sales or service provision scheme (see below).
- 3.2 A distance contract is defined as one where the supplier 'for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded'. This means that there is no face to face contact between the supplier and the consumer at any point during the contract-forming process, which ends when the consumer is committed to making a purchase.
- 3.3 The DSRs therefore apply if you sell cars to consumers without any face to face contact with the consumer for the purpose of concluding the contract, eg:
- over the internet
 - by interactive digital television
 - by mail order, or
 - by fax.

Q & A

Q Do the DSRs apply to the sale of both new and second-hand cars?

A Yes, the DSRs apply equally to distance contracts for new and second hand cars.

Q What are the 'excepted contracts'? Is the sale of cars an excepted contract?

A Contracts for the sale of cars are not generally excepted from the DSRs but in certain selling situations they may fall within an exception. Contracts that are excepted from the Regulations are listed in Regulation 5 and include contracts relating to financial services and sale by auction.

Q I sell cars on HP and credit sale – does this mean these sales are excepted?

A HP and conditional sale agreements fall within the definition of credit and therefore within the definition of financial services for the purposes of the DSRs and are therefore excepted. They are however subject to the information giving and cancellation regime contained in the Financial Services (Distance Marketing) Regulations 2004 and, where relevant the Consumer Credit Act 1974, rather than the DSRs. For further information about the Financial Services (Distance Marketing) Regulations see:

www.opsi.gov.uk/si/si2004/20042095.htm

Q As well as excepted contracts there are some other 'contracts to which only part of the regulations apply' – is the sale of cars covered by any of these?

A Regulation 6 lists other contracts to which the main provisions of the DSRs do not apply. One of the exemptions listed is 'Contracts for the provision of transport services... on a specific date or within a specific period'. This means that, for example, airline tickets fall outside the ambit of the majority of the DSRs. However, this exemption does not relate to a contract for sale of goods, such as a vehicle, so the sale of cars is not exempted.

Q Is there a difference between excepted contracts and 'exceptions to the right to cancel'?

A Yes. Regulation 13 lists certain contracts where a consumer does not have a right to cancel under the DSRs but other requirements of the DSRs still apply. See paragraph 3.10 onwards for specific examples.

Q A consumer has to come to my showroom to collect the car, so does this mean this isn't a distance contract?

A For the DSRs to apply there must be no face to face contact for the purpose of making the contract up to the point when it is concluded. A contract is concluded when a binding agreement comes into existence, ie; when the consumer commits to buying and you commit to selling the car. It will therefore usually be irrelevant if there is contact on delivery, because the commitment to buy and sell will have already been made. The DSRs do not apply where you and the consumer make no binding contractual commitment until the car is either delivered to the consumer or they collect the car from your premises but, in these cases, the consumer will be free not to go ahead with the purchase and cannot be required to forfeit any prepayments or deposits.

Q What if I am not the supplier of the cars but I am acting as an agent for consumers in procuring cars and arranging purchases?

A You are entering into a service contract to which the DSRs apply. This sort of arrangement is covered in Chapter 4 of this guidance.

Q What if I am not supplying cars directly to consumers but to agents who arrange purchases on behalf of consumers?

A This will remain a consumer contract as the contract for the sale of your car will be between you and the consumer. In this case the agent never owns the car and therefore this is not a business to business contract. If there is no face to face contact with those agents for the purpose of concluding the contract, it will still be a distance contract and you will therefore still need to meet the requirements of the DSRs. It is your responsibility to make sure all the required information is provided to consumers (see paragraph 3.4 and 3.5, below for further information). If you have no direct contact with the consumer only with their agent you should make it clear to the agents that you are supplying the information required by the DSRs and that the agent should pass this on to the consumer.

Information prior to contract conclusion (Regulation 7)

- 3.4 Consumers are entitled to the following information about the car sale contract, in good time before making a decision to buy:
- your business's name and, if payment is required in advance, your business's address
 - a description of the main characteristics of the vehicle to be sold
 - the price of the vehicle including all taxes
 - the delivery costs
 - the arrangements for payment and delivery
 - the existence of the consumers right to cancel (see paragraphs 3.6 - 3.10 for further details)
 - if consumers are to use a premium rate telephone number the cost of the call must be specified
 - the period for which the specified price for the vehicle will remain valid
 - if you propose to supply a substitute vehicle in the event of a particular car ordered being unavailable, and
 - where consumers do not want substitute vehicles, that you will bear the cost of their returning the substitute.

Information prior to contract conclusion (Regulation 7) Q & A

Q In what format do I have to provide the prior information?

A This information has to be clear and comprehensible and provided in a manner appropriate to the means of distance communications used. If you sell cars using a brochure or website, this information should be positioned prominently so that consumers will see it before entering into a contract with you. It should be written in such a way that the average consumer will understand the information. If you sell to customers using email or fax, this information should be included in the body of the communication. If you sell to consumers over the phone and they have not necessarily seen a website or brochure which contains all the required information it will need to be given to them in a way appropriate to the means of distance communication used. If you want to rely upon their having read the information in a brochure or on a website rather than repeating the information in your sales conversation with them, you should check that they have access to the necessary information in that form. In case of dispute you will need to be able to demonstrate how you provide the relevant information. In the case of telephone conversations you must also identify the company name and commercial purpose for the call at the start of the conversation.

Q The DSRs talk about ‘the price of the vehicle including all taxes’ – what does this mean? I am importing a car from the EU, what do I do about duty and VAT?

A All new cars are liable to VAT on entry to the UK but duty will only apply if the car is imported from outside the EU. The rate of duty applicable will depend upon whether the car is new, second-hand or classified as of historic interest. The price given to consumers must be a total price including these duties if the consumer will in fact pay them. If you pay them and do not pass the duties on they do not form part of the price at all.

Q I offer cars for sale and allow consumers to select additional optional extras, how should I ensure I comply with the requirements on description?

A Consumers must receive a description of the main characteristics of the car when they agree to buy it. This information must therefore be provided at the point when consumers have selected their options and the contract information has become certain. This does not make the goods 'made to their personal specification' (see the section on cancellation - paragraphs 3.6 to 3.10 and following question and answers). Where you source cars from abroad and the car's features vary from the standard UK specification for the equivalent model, this should be made clear.

Q How can I tell consumers the price of a vehicle, if I am advertising cars that I have not yet bought but intend to purchase from an overseas supplier?

A The DSRs do not apply to advertising, which does not itself constitute an offer to sell, but all advertising will need to comply with the Control of Misleading Advertisements Regulations 1988. Your advertising needs to be representative of the prices at which you can source cars in order not to be misleading. More details of the legislation can be found at:

www.offt.gov.uk/Business/Legal/CMAR/default.

Further information on misleading advertising and other relevant legislation, such as that governing trade descriptions and misleading price indications can be found on the DTI website at:
www.dti.gov.uk/ccp/topics1/adprice.htm

The DSRs require that you tell consumers the price at which you will supply a specific car to them. This obligation is distinct from your general advertising of prices. In order to comply with the DSRs you

must at the point where a contract is concluded, state the specific price at which you will supply a particular car. That price may be fixed in a foreign currency but, if it is, you should tell consumers the sterling equivalent on the day you provide the price information, stating which exchange rate you use. If you fix your prices in a foreign currency with the result that the sterling equivalent may change before the date for payment and you want to pass on the risk of fluctuations in the exchange rate, you must tell consumers the currency in which the price is fixed and that they carry the risk of exchange rate fluctuation. You also need to tell them where the exchange rate index you use is published so that they can work out the sterling equivalent and judge the price fluctuation risk.

Q It is only in rare circumstances that I am unable to provide the exact specification of vehicle advertised. Do I therefore have to tell all consumers I intend to provide substitute goods?

A The requirement to inform about substitutes relates to the supply of a specific car to a specific person and does not apply to advertising describing the type of car you generally supply. But if you are advertising a particular car for sale and that advertising is intended to convey all the information which the DSRs requires to be provided before a contract is concluded, you should include a general statement about reserving the right to supply substitute goods. Where you exercise this right, the cost of returning unwanted substitute cars must be paid by you rather than the consumer, and the consumer must be informed that this will be the case.

Further information provision (Regulation 8)

3.5 You have a responsibility to ensure the consumer receives the following further information in writing or in another durable form before the conclusion of a contract or at the very latest on delivery of the vehicle to the consumer:

- confirmation of the information at paragraph 3.4 bullet points 1-6
- information about the conditions and procedures for exercising the right to cancel, including notice that the consumer will be required to return the car to you if they cancel (if the contract requires them to do this) and who will be responsible for the cost of recovering the car if they do not return it as required
- the geographical address of the supplier to which the consumer may address any complaints, and
- information about any after-sales services and guarantees.

Further information provision (Regulation 8) Q & A

Q What if the consumer has a copy of the catalogue?

A If the consumer possesses a catalogue when ordering, and this contains all of the information required by regulation 8, you don't have to send the customer the information again in durable form to meet this requirement.

Q What is a 'durable' form?

A This means in a form that can be retained by the consumer, such as an email that can be printed or a letter that can be kept for future reference. Information on a website will not be considered to be durable if you can update the relevant area of the website to change the information content at any time after the consumer has accessed this information.

Q What if I've already given the consumer this information over the telephone?

A Then you must provide the information again in a form that they can retain and refer back to. This safeguards you as well as the consumer as both parties have the same information.

Q You talk about conclusion of a contract – when is a contract concluded?

A A contract is concluded when the consumer becomes bound to purchase something and the supplier becomes bound to supply it. Conclusion of a contract is determined by the facts on a case by case basis. It is therefore in your interests to make the steps by which a contract may be concluded plain to consumers. For example, if you advertise on a website and the consumer orders on-line you should make it clear at what stage you intend a binding agreement to be reached. You need to explain whether the contract becomes binding when the consumer places their order, or only when you confirm you have accepted their offer to buy. If you are selling via a medium which comes within the definition of an information society service in the E-Commerce Regulations you are also required to explain the technical steps which the consumer has to follow to conclude the contract. For more information on the E-Commerce Regulations see www.opsi.gov.uk/si/si2002/20022013.htm

Q What information do I have to give consumers about their right to cancel?

A You must give them details of how they can exercise this right. Also, if you have made it a term of your contract, that the consumer will be expected to return the goods on cancellation, you must tell the consumer this explicitly. You must also say who must bear the cost of returning the vehicle on cancellation, or of its being recovered if the consumer does not return it as required.

Q I regularly supply warranties to consumers. What do I need to do?

A If a car you sell comes with a warranty you must explain what it covers. If the car is coming from abroad and the provisions of the warranty are different from that coming from the UK, you must explain that to the consumer. You should explain who the warranty provider is.

Cancellation rights (Regulations 10, 11 and 13)

- 3.6 The DSRs provide a cooling off period and the consumer has an unconditional right to cancel during it.
- 3.7 If you provide the information required by Regulation 8 at the latest when the car is delivered to the consumer, the right to cancel runs from the day the contract is concluded and ends on the seventh working day after the day the consumer receives the vehicle.
- 3.8 If you have not complied with the requirements to provide durable information before or on delivery, the period in which the consumer has a right to cancel is significantly extended. The consumer's right to cancel will end only on the expiry of seven working days starting with the day after the information is received, up to a maximum of three months and seven working days after the day the consumer received the vehicle.
- 3.9 To cancel consumers must send notice of cancellation in durable form to the supplier.

3.10 Certain goods are exempt from cancellation rights. Within the context of this guidance, the following exemptions apply:

- goods whose price is dependent on fluctuations in the financial market which cannot be controlled by the supplier (see the following Q & A)
- goods made to the customer's specification or clearly personalised (see Q & A below)

Cancellation rights (Regulations 10, 11 and 13) Q & A

Q I supply cars from overseas and the sterling price depends on exchange rate variations. Do I have to give cancellation rights?

A Yes. The exception for goods whose price is dependent on fluctuations in financial markets covers those goods whose prices are actually determined by those trading fluctuations but not goods whose price is fixed in one currency but which may vary if paid for later in another.

Q The customer specifies not only the make and model of car but options such as colour and extras such as sun roof or additional fittings. Does this mean that the car is made to their specification and cannot be returned?

A No. Unless consumers are buying a truly bespoke car where the car is specifically designed for a particular consumer, cancellation rights must be provided. Where they are picking from a pre-defined list of options which are available to all consumers, the exemption will not apply.

Q If a consumer requests that a special device be fitted, such as electronic tagging, does this mean that the car has been personalised and cannot be returned?

A Not if it can be professionally removed or the tag reassigned to another owner. If you offer the fitting of such items as a separate service, you may be able to retain the cost of fitting and removal. For more detail on service contracts see Chapter 4.

Q We have to register a car before it can be driven on the roads, so we have to do this before we can deliver a car to a consumer. Does this make the goods personalised? How can consumers return cars if they have already been registered to them?

A Although an individual's name is attached to registration documents, it is the number itself that is registered to the car, and the car can be transferred to any other person. Therefore, this process cannot be described as personalising the vehicle to an individual consumer and cars do not fall within this exemption.

Q Surely cars are 'liable to deteriorate or expire rapidly' because they depreciate so quickly?

A This exemption relates to physical deterioration. A car may lose value once it has been sold and registered to an owner, but this is not due to a change in its physical condition.

Q Are cars goods that by their nature cannot be returned?

A No. This would cover goods that are physically impossible to return. Nothing in a car's nature prevents it from being returned.

Q Can a consumer just ring my office to cancel?

A No, unless your contract expressly allows for cancellation by phone, a phone call is not enough. If they are exercising their right under the DSRs the consumer has either to leave the notice at the address of your business specified in 3.5 above (further information provision – Regulation 8), or to send it by post, by fax or by email.

Q I have a consumer refusing to give me a reason for his cancellation. Can I refuse to accept?

A No, the consumer's right to cancel within the cooling off period is unconditional. You cannot refuse cancellation because the consumer has not given you a reason.

Q When is the notice of cancellation effective from?

A In the case of a posted cancellation notice, the notice will be taken as effective from the day it was posted whether or not you receive it. The notice may be sent to you or to any other person that you have told the consumer can accept it on your behalf.

Effect of cancellation (Regulations 14 -18)

- 3.11 If a consumer cancels an order, the effect is to treat the contract as if it had never been made. All money paid by the consumer must be returned within 30 days. This includes any associated costs such as outbound delivery charges as well as the actual price of the vehicle.
- 3.12 The consumer has a responsibility to 'restore' the vehicle to you. This in effect means only that the consumer must make the vehicle available for you to collect. You can include a term in your contract which requires consumers to return the vehicle to you. However, you cannot make cancellation conditional upon their complying with that term. If they do not return the car as required by the contract, their only obligation is to allow you to recover it and pay your direct costs of doing so.
- 3.13 The DSRs impose a responsibility on consumers exercising their rights to cancel to take reasonable care of the vehicle whilst it is in their possession.

Effect of cancellation (Regulations 14 -18) Q & A

- Q** What does 'reasonable care' mean? Does this mean the consumer cannot drive the vehicle?
- A** We consider that a consumer taking reasonable care could certainly test drive the car, just as a consumer may visit a show room to take a vehicle out on a test drive. We are unlikely to object to suppliers pointing out to the consumer what they consider to be reasonable care – for instance by suggesting an acceptable mileage limit. If consumers did not follow this guidance it would be a question of fact whether they had still exercised reasonable care – which in the event of a dispute would ultimately be for a court to decide. Any excess mileage travelled will not, however, take away a consumer's statutory right to cancel.

Q When does responsibility to take reasonable care end?

A The responsibility will end if and when the consumer delivers the car to you or to anyone else you have nominated to accept notice of cancellation. If consumers return cars at their own expense to you or that person, they must take reasonable care to see that you will receive it and that it is not damaged in transit, but otherwise their responsibility ends when they despatch the car.

If they do not physically return the car, their responsibility to take reasonable care of it lasts for six months if you made it a term of the contract that they must return the car to you, or 21 days if you did not. During this period if you want the consumer to make the car available for collection you must make a request in a durable form (either before or when you intend to collect the car). If the consumer unreasonably refuses to hand over the car, their responsibility continues until the car is returned to you.

Q What happens if the consumer has damaged the vehicle?

A A small amount of wear and tear would not mean the consumer had not taken reasonable care, for example splash marks that could be washed and polished away or slight wear to tyre treads. However more significant changes to the car's appearance such as dents, damage to body work or alterations might indicate a lack of reasonable care. This would depend in each case upon whether the consumer's lack of care had in fact caused the damage. Failure to take reasonable care does not take away a consumer's right to cancel, but would mean that you had a claim against the consumer for the loss in value of the goods that this had caused.

- Q Do consumers only have to start treating the car with reasonable care from when they decide to cancel?**
- A No. The responsibility to take reasonable care also applies to any period from the date of delivery to the consumer, including before the cancellation notice is supplied to you by the consumer.
- Q Can I write something into my terms and conditions to ensure the consumer returns the car to me in the event of cancellation without it costing me money?**
- A You may have a term in your contract requiring consumers to return cars at their own expense. If they fail to do so, you may deduct the direct cost of recovering the vehicle from the refund given back to the consumer. This must be no more than the actual cost to you of collecting the car from where the consumer has made it available. You may not make the right to cancel conditional upon the return of the car
- Q The consumer's payment included a part exchange, how does that affect cancellation?**
- A If you have already taken possession of the part exchange vehicle and the consumer cancels by providing a written cancellation notice, you must return the part exchanged vehicle or give full value for the part exchange. If you have not returned the part exchanged vehicle to the consumer within ten days of the date of cancellation in substantially the same condition as it was passed to you, the consumer will be entitled to recover from you a sum equal to the full part exchange allowance.

Q What if the consumer took out personal finance to buy the car? What is the impact of cancellation?

If the personal finance is separate to the agreement to supply the car the DSRs provisions may operate to cancel the related credit agreement. Please refer to section on Related Credit, paragraphs 3.14 - 3.16.

Q What if the consumer discovers that the car is faulty?

A As with any sale of goods contract cars must be of satisfactory quality, fit for purpose, and as described by you when you entered into the contract with the consumer. If this is not the case, you will be in breach of contract and the consumer will have a right to reject the car or demand repair or replacement. You should ensure you are aware of your responsibilities under the UK legislation for the sale and supply of goods and services. See:
www.dti.gov.uk/ccp/topics1/saleandsupply.htm

If consumers reject cars which do not conform to contract, they cannot be made to pay for their return. Your contract terms should make the distinction between exercising the right to cancel under the DSRs and exercising the right to reject, seek repair or seek replacement when a car is faulty or not as described. If a consumer rejects a car for breach of contract this may also mean that they are able to claim for out of pocket expenses.

Cancellation of related credit agreements (Regulation 15)

- 3.14 The DSRs also make provision for related credit agreements in the event of cancellation. Related credit agreements are those under which a fixed sum of credit is granted either by you or by a separate lender under an arrangement between you and the lender. The DSR related credit provisions do not extend to credit that consumers source and arrange themselves where there is no arrangement between you and the lender.
- 3.15 Cancellation of the goods contract for the purchase of the vehicle will have the effect of also cancelling any related credit agreement. Only that part of the credit agreement that requires repayment of the debt with interest will continue in force. Any money paid to you by the consumer or by the creditor on their behalf under or in relation to the agreement with you will need to be reimbursed to the person who made the payment. You can deduct only the direct costs of recovering the car. The consumer will need to repay the capital with any interest which has accrued.
- 3.16 However, if the consumer repays the whole debt before the date on which the first repayment instalment falls due, or where there are no dates for instalments, within one month of cancellation, no interest will be payable on their debt. The creditor must pay to the consumer any additional sums paid to them that are not due under the terms requiring repayment of capital and interest, eg: loan setup charges.

Cancellation of related credit agreements (Regulation 15) Q & A

Q Are there additional responsibilities if the consumer cancels a purchase funded by a related credit agreement?

A If you are not the creditor and you receive notice that the consumer has cancelled the vehicle contract, you are duty bound by the DSRs to pass that information on to the creditor immediately.

Performance (Regulation 19)

3.17 Unless you agree otherwise with the customer, you are obliged to perform the contract within 30 days beginning with the day after the day on which the order was placed.

Performance (Regulation 19) Q & A

Q As I source the cars I sell from abroad, it is difficult for me to specify exact dates. How can I possibly meet this requirement?

A You should give an initial delivery date to the consumer if you do not want to be bound by the 30 day rule in the absence of any other arrangement. If you have problems delivering by the agreed date you must inform the consumer. You are able to propose a revised delivery date but you should be aware that the consumer cannot be obliged to agree to it, unless the parties agree otherwise. You will need to ensure that the consumer is aware of how your business operates and the potential for any delays and provide a realistically long delivery date at the outset.

Q My supplier has let me down, I won't be able to supply the car on time and the customer won't agree to a revised date. What should I do?

A Unless you made provision for supplying substitute goods as part of the contract and you can provide a substitute within the agreed timeframe, you must inform the consumer and must refund all the money paid by the consumer (or any one else) in relation to the contract. The refund must be made as soon as possible and in any case within 30 days of the day after the agreed delivery date. If you do provide a substitute the consumer will be able to refuse it without paying for its return.

Q What if there is a related credit agreement?

A If you cannot perform the contract within 30 days or the extended time period agreed, the credit contract ends automatically. You would need to tell the creditor you failed to perform, in the same way that you inform them when you receive a cancellation notice.

4 SOURCING SERVICES

How the DSRs apply

- 4.1 In some circumstances, companies that advertise cars to consumers by distance means do not in fact buy and sell cars on their own account but operate as sourcing agents locating and/or buying cars for consumers. The agent may broker a deal between the consumer and the third party seller or may conclude the contract with the third party acting as the consumer's agent.
- 4.2 Sourcing or procuring a car for a consumer would constitute a finding or shopping service rather than a transport service.
- 4.3 If you operate this type of business model there are two distinct contracts in operation:
- a. The agency contract
This is an agreement between the consumer and you as their agent. The consumer agrees that the agent will act on their behalf to do something they would otherwise have to do themselves. This is a contract for the supply of services.
 - b. The car sale contract
This agreement between the third party seller and the consumer is for the sale of the vehicle. It is a contract for the supply of goods.
- 4.4 Legally there will be two distinct contracts in operation – a service contract for agency services and a goods contract for the purchase of the car by the consumer. It is obviously up to you what contractual arrangements you make with your client. However it must be clear to consumers what their rights and responsibilities are under both distinct contracts.

How the DSRs apply Q & A

Q Do the DSRs apply?

A The DSRs will apply to both the agency contract (supply of services) and the car sale contract (supply of goods) if there is no face to face contact between the parties for the purpose of the contract up to the time when each is concluded. It is possible for just one of the contracts to be a distance contract and the other not to be, depending on the contact that takes place prior to the formation of each.

Q If the goods I am sourcing are excepted from all or part of the DSRs, is my finding service excepted as well?

No. The contract for a finding service is a contract for the provision of a service. There is therefore no question of exceptions for goods applying to it.

Q I am in business, and so is the car seller. The DSRs apply only to contracts between consumers and a business, don't they?

A That is correct. However if you enter into a sale of goods contract as agent on behalf of a consumer principal you are acting in the consumer's personal capacity rather than dealing as a business on your own account. If there is no contact between you and the seller for the purpose of making the contract the resulting distance contract is one between the supplier and your client (the consumer) so in our view is covered by the DSRs.

Q Do consumers need to know the details of both contracts?

A Consumers need to be clear about their rights and responsibilities in relation to any agreement that you will provide for services and in relation to any contract for the actual purchase of the vehicle. They

must receive clear pre-contractual and durable information about any services they are paying for separately from information about the price of the car.

Q Will the DSRs apply to the contract for the sale of the car in cases where my company collects the vehicle directly from the supplier, even though the consumer has not had any contact with the supplier themselves?

A If you are acting as the consumer's agent when you pick up the car you stand in the consumer's shoes for the purpose of assessing whether there has been relevant face to face contact. The consideration is whether you had face to face contact with the seller for the purpose of the contract before or at the conclusion of the contract, ie; before the point in time when a commitment to purchase had been made. If the contract has already been made before your face to face contact with the seller the DSRs will apply to the contract. The car supplier will have to comply with the DSRs and as the consumer's agent you will be responsible for communicating any information given to you back to your client.

Q I operate a distance selling scheme where I act as an agent but the consumer has a contract to buy the car from me. How do the DSRs apply?

A If you are truly acting as an agent for the consumer, the contract for the sale of the vehicle will not be between you and the consumer, but between the third party seller and the consumer. If you own the vehicle yourself and so are able to sell it on to the consumer, you are not acting as an agent for the consumer but as a seller on your own account and your responsibilities when selling the car are as described in Chapter 3 of this guidance.

Q I act as agent to source the car but only broker the deal between the supplier and the consumer. Do the DSRs apply?

A If your contract with the consumer was concluded **without** face to face contact, you have entered a distance contract to provide services and the DSRs apply to that contract. If you act as agent for the seller at any point in brokering the introduction, eg if there is an event upon which you earn commission from them, you stand in the shoes of the seller for that purpose and you may therefore share their responsibility for compliance with the DSRs. If you never act as the seller's agent for any purpose, your responsibilities will only be those that apply to your service contract with the consumer.

Q What happens if I source a car from abroad on behalf of the consumer and the seller doesn't comply with the DSRs?

A If the overseas seller is within Europe (the European Economic Area) they will have responsibilities either under the DSRs or under the domestic legislation implementing the Distance Selling Directive in their state of domicile. However, if you have not taken reasonable care in choosing a European supplier who complies and have entered the consumer into a contract with a non-compliant supplier the consumer may have a claim against you as their agent. If you are putting consumers in touch with or entering them into contracts with sellers outside the UK, you must make this clear to consumers when giving information about the main characteristics of the services that you agree to provide to them.

Q What are the responsibilities of the seller's agent under the DSRs?

A If you act as agent for a seller and there is no direct relationship between the seller and the consumer, you need to consider with your principal how to discharge their DSR obligations under the contract for sale of the car, because they will otherwise be in breach of the DSRs and as their agent you may be responsible for their breach.

Service contract: Prior information (Regulation 7)

4.5 Before consumers decide to enter into contracts with you, you must provide them with the following information. This may be done by placing the information on a website or in a brochure, by email or over the phone:

- your business's name and if payment is required in advance your address
- a description of the service that you offer and the cost of your service including all taxes. If elements of your service are optional it must be clear exactly what elements of service are included for various costs
- any delivery charges must be specifically identified
- the arrangements for payment of the service fee, arrangements for delivery of the car (where relevant) and arrangements for performance
- that they have a right to cancel and, where you intend to provide durable information pre-performance and where they agree to the arrangement, that the service will become non-cancellable once commenced (see paragraphs 4.8 - 4.14 for further details)
- if the consumer is to use a premium rate telephone number, the cost of the call must be specified
- the period for which the cost of your service will remain valid, and
- where appropriate, the minimum duration of the contract.

4.6 This information has to be clear and comprehensible and provided in a manner appropriate to the means of distance communication used. If you use a brochure or website, this information should be prominently placed so that consumers will see it before entering into a contract with you. It should be written in such a way that the average consumer will understand the information given. If you deal with customers using email or fax, this information should be included in the body of the communication. If you deal with customers over the phone and they have not necessarily seen a website or brochure which contains all the required information you must give this information to them verbally. If you publish this information on a website or in a brochure you must have a mechanism for making sure the particular consumers with whom you contract have access to the information in the form in which you provide it.

Service contract: Prior information (Regulation 7) Q & A

Q How do the prior information requirements differ from a straight contract for the purchase of a car?

A It is important that you give clear information about the service that you are offering to provide and how much you will charge for it. This is distinct from, and in addition to, information about the cost of the vehicle and its specification.

Q What do you mean by 'a description of the service that you offer'?

A You need to explain what you are doing for the money you earn in sourcing the car for the consumers. This may include time searching, ordering, collection from supplier, importation, registration, organising the consumer's payment to the supplier, checking of vehicles against the consumer's order criteria, negotiation over incorrectly supplied cars, and/or final delivery to consumers. It is important that you make it clear to any potential customers how far your role as their agent extends. Are

the consumers giving you the right to enter into a contract on their behalf for the purchase of a car from a supplier of your choice? Alternatively are you promising only to introduce them to a potential supplier, leaving them to make the contract if they choose?

Q What about the price of the vehicle itself and the period for which I can obtain it at that price will remain valid for?

A For commercial reasons it is likely that you would want to include representative price information on your website. Unless you post point of sale price information which is capable of being accepted as an offer (eg because consumers can conclude a binding goods contract with you on-line) we would treat such content as advertising, not price information under the DSRs. You should ensure that any representative price information you publish conforms to the Control of Misleading Advertisements Regulations 1988, so that it does not mislead consumers in any way. If you are acting as an agent to source cars for consumers, your website content should not give the misleading impression that you are selling any cars advertised on it. Further details can be found at:

www.offt.gov.uk/Business/Legal/CMAR/default.htm

If you provide a finding service, the DSRs require you to give information about the price of the service you provide rather than a price for the particular car which the consumer may buy. Whether you promise to find a car at a given price or at the best price available at the time should form part of the description of your service. You need not give a car price unless your service includes a guarantee that you will find one for that price or less.

Service contract: Written information (Regulation 8)

4.7 The following information must be provided to the consumer in a durable form (eg: in writing, by email or by fax). If this information is not given to the consumer when or before the contract becomes binding it must be given in good time during the performance of the contract:

- information at paragraph 4.5 bullets 1-6
- information about the conditions and procedures for the consumer to exercise their right to cancel
- your geographical address, and
- information about any after-sales services or warranties that you offer.

4.8 In addition, if you wish to prevent the consumer from cancelling once you have begun to perform services for them, you must inform them in a durable form, before they enter into a contract with you, or at the latest before performance starts that they will not be able to cancel the contract once performance has begun with their agreement. If you do not provide this information in durable form before starting work, or you do not get the consumer's consent to your starting work before the expiry of the usual seven day period, the contract will remain cancellable even after you have started to perform it.

Service contract: Written information (Regulation 8) Q & A

Q When does performance of the contract start and the right to cancel end?

A Performance starts as soon as you act in a way that is consistent with your role as the consumer's agent rather than on your own account. This, for example, could be when you start searching for a vehicle to meet the consumer's requirements, but would not be while you were preparing paperwork to confirm your arrangements with the consumer. In any event the contract only stops being cancellable if you have the consumer's consent to start work before the expiry of the usual cancellation period (see paragraph 4.9 – 4.14).

Q In my experience consumers are only interested in exactly how much a car is going to cost them. Can I give a combined price for my services as an agent and the price of the vehicle?

A No. The DSRs require that you give consumers the price of the service as part of the prior information. Consumers need to know the price of the car and the service you provide separately, because they have independent cancellation rights for goods and services contracts and the goods contract will remain cancellable after you have started working under the service contract (see below). If consumers exercise their cancellation rights in respect of the goods contract but cannot cancel their agency contract with you because performance has already begun, they need to know how much your services will cost them.

Q Can I use my website to pass this information on to consumers?

A It is a requirement of the DSRs that consumers receive this information in a 'durable' form. In other words, they must be sent or be able to retain a copy to which they can later refer. Information on a website which can be changed after it was provided would not satisfy this requirement.

Cancellation rights for the service contract (Regulations 10, 12 and 13)

- 4.9 The consumer has rights to cancel a service contract they enter into with you by distance means but they are different to those for supply of goods. The point at which the right to cancel a service ends depends on when you provide the durable information described in paragraph 4.7 (the required durable information) and whether the consumer agrees to starting the service before the expiry of the usual cancellation period.
- 4.10 If you give the consumers the required durable information **on or before the day the contract is agreed**, cancellation rights will last for seven working days, beginning the day after the contract was agreed. If the required durable information is provided **after the contract is agreed but within three months** (beginning the day after the contract was agreed), cancellation rights will ordinarily extend for seven working days after the information is received.
- 4.11 In some circumstances a consumer may want the service to start before the usual cancellation period expires. In that case it is possible to displace the timings above. Providing that the **required durable information has been supplied before performance starts and that the consumer has agreed to performance starting before the usual cancellation period has expired**, cancellation rights will end when performance starts.
- 4.12 Where the consumer agrees to such an early start but the required durable information is not provided until performance has already started, nevertheless it is provided in time for it still to be useful, cancellation rights will extend to seven working days after the day the consumer receives the information. However, in this case, if performance of the contract is completed within the seven working

days after the day the consumer receives the required durable information, cancellation rights will end on the day of completion.

- 4.13 Where the **required durable information has not been provided at all**, the cancellation period ends on the expiry of three months and seven working days beginning with the day after the day on which the contract was agreed.
- 4.14 It is important to note that, if you fail to give consumers the required durable information before performance starts, or if you fail to obtain their consent to you starting work early, they will have a right to cancel their contract even though you have already started work. If you wish to prevent consumers from cancelling contracts once you have started work, you must obtain their consent and provide them with the required durable information, including information about when their cancellation right will end before performance starts.

Cancellation rights for the service contract (Regulations 10, 12 and 13) Q & A

Q Can consumers cancel the agency agreement, before I begin work?

A Yes, if you have not started work and seven days have not passed since you provided the durable information consumers will be able to cancel. If you want to start work before the expiry of the usual cancellation period you should inform the consumers of exactly when you intend to start working on their behalf and obtain their agreement to this, as this may not be self evident. You need to do this because unless consumers have agreed to work starting they will still be able to cancel once you have started.

Q What is the effect of cancellation?

A As with goods contracts, consumers must be refunded all money paid within 30 days from the day on which the consumers cancel the contract. The effect of cancellation is to treat the contract as if had never been made.

Q What will happen if I don't give a consumer the information about the right to cancel until after the performance of the contract starts?

A The consumer will have the right to cancel the service and to receive a full refund up until seven days after receiving this information from you or up until performance is complete if that is sooner. If a consumer cancels you will not be able to get recompense for any work carried out on the consumer's behalf.

Q What if a consumer cancels the agency contract after I have entered them into a further contract with the supplier of the vehicle?

A The contract for the sale of the car may still be binding on the consumer, who should be advised of this so that this contract can be cancelled separately. As Regulation 10(2) provides that once cancelled the agency contract will be treated as if it had never been made there is a question of whether the agent will be regarded as having entered the consumer into the contract for the sale of the car without actual authority. This is an additional risk (other than that of not being paid) of not providing the consumer with information in a durable form before performance commenced.

Performance (Regulation 19)

- 4.15 As with goods contracts, the DSRs require you to perform the contract within 30 days unless you agree otherwise. It is therefore important that if you are unable to perform all that you agree to do as part of your sourcing or procurement service within 30 days that you inform the consumer of this fact before the contract is concluded. You need to agree a realistic timetable at the outset.

Performance (Regulation 19) Q & A

Q What is my position if I agree an alternative period of two months for performance of the contract with the consumer but due to circumstances beyond my control I am unable to arrange delivery within this timescale?

A You will have to inform the consumer that you are unable to perform the contract within the agreed timescale and you will be required to reimburse any sum paid in relation to the contract. This means reimbursing any money paid in respect of the service contract and any pre-payment you hold in respect of the goods.

Q Can I agree a later delivery target with the consumer?

A Yes, as long as the consumer agrees to an extension. This will not affect the consumer's rights to cancel, or to demand a refund if you fail to meet the revised delivery date.

Dealing with the DSR responsibilities of a third party supplier

- 4.16 The goods contract for the sale of the car will be between the consumer and the third party supplier. Whether it is covered by the DSRs or not will depend on whether there are face to face dealings between you (acting on behalf of the consumer) and the supplier for the purpose of the contract at or before the point when it is concluded. If there are face to face dealings between you, the consumer's agent, and the supplier of the car for the purpose of making the contract, then the DSRs will not apply to any contract for the supply of the car which you may conclude on the consumer's behalf. But if there are no face to face dealings between you acting as the consumer's agent and the supplier of the car, and the supplier of the car is operating under a distance selling scheme any car supply contract you may enter the consumer into will be a distance contract.
- 4.17 The DSRs do not place any specific responsibilities on a trader operating as an agent; the usual duties of an agent to their client will therefore apply.
- 4.18 If the car supply contract is a distance contract, the scope of your obligations will depend on whose agent you are at any given stage in the transaction. For as long as you act as the consumer's agent you are bound to act in the consumer's best interests in preference to your own and to disclose any information you receive as their agent. But if you act as the vehicle supplier's agent at any stage, you may share their responsibilities under the Regulations at that stage.

Dealing with the DSR responsibilities of a third party supplier Q & A

Q I usually source cars from abroad for my consumers. The contracts are therefore often not written in English. Is there a need for me to pass across this contract, if it won't be meaningful to the consumer?

A Under the DSRs you are not required to pass the actual goods contract as written to the consumer, though the general agency principle that an agent has duties to disclose information which they have been given by third parties to the person for whom they are acting will apply. However the fact that you are sourcing the cars from overseas should form part of the description of your service when you comply with Regulations 7 and 8, particularly if the contract will not be in English and/or overseas models you are sourcing vary from the standard UK specification for the same model. Although the full contract may not be available in English, the information the vehicle supplier must provide under Regulation 7 and confirm under Regulation 8 must be in the consumer's own language if it is to be regarded as clear and comprehensible with regard to the principles of good faith in commercial transactions.

Q What sort of information should I give consumers when I agree a contract with a third party supplier?

A You need to make it clear to consumers whose agent you are at various stages in the process and assess how to deal with the seller's obligations to the consumer. If your contract terms fail to do this they are likely to lack clarity and may be considered unfair under the Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs). www.opsi.gov.uk/si/si1999/19992083.htm

If you enter a consumer into a contract whilst acting as the consumer's agent you should ensure that the consumer receives any information which the car seller provides in order to discharge their obligations under the DSRs.

If at any stage in the contract forming and/or delivery process you also act as the seller's agent for any purpose you need to consider how you, as the seller's agent, will discharge any information-giving obligation they have at that stage in the process.

Q Why do I have a responsibility to pass on information from third parties?

A If there is no direct dealing (distance or otherwise) between the consumer and the supplier of the vehicle, the only way that consumer can be guaranteed the intended protection of the DSRs is if you pass on the information as agent for one or other of them. If at the time you receive the information you are acting as the consumer's agent, your duty to your principal obliges you to pass it on. If at the time you receive it you are acting as the seller's agent you stand in their shoes for the performance of their obligations, and may yourself be responsible under the DSRs for their non-compliance.

Q Should I as the consumer's agent be responsible for providing the buyer with the car suppliers name and address? Do I need to give consumers the name and address of the car supplier?

A Yes, under general agency principles. If there is a breach of the goods contract consumers would, depending on circumstances, want to assert their cancellation rights or apply for compensation through the courts. To do so consumers would need to know with whom they have contracted. Prior to the conclusion of the contract the seller must tell the consumer their identity and where the contract requires payment in advance, their geographical address. If you enter into the contract on behalf of a consumer you should require this information and pass it back to them.

Q I deal exclusively with car suppliers in Europe not the UK. I would like to ensure that I pass on all the information requirements from the DSRs to my clients but if the supplier isn't based in this country, does this mean the suppliers I arrange contracts with do not have to comply with the DSRs?

A Although the DSRs are UK legislation, they stem from a European Directive. The Distance Selling Regulations 2000 implement European Council Directive (97/7/EC), the Distance Selling Directive. All countries in the European Economic Area have been obliged to implement this consumer protection into their own domestic legislation. Therefore traders in all member states will be required by the legislation which applies in their own country of domicile to provide similar information and cancellation rights as described in Chapter 3 of this guidance when entering into contracts with consumers. This information should be given to you when you act on behalf of a UK consumer.

Q What if I act as an agent for the supplier rather than the consumer?

A The supplier's duties are as set out in Chapter 3. Both you and your supplier principal could be held responsible for non-compliance with the DSRs as they apply to the contract to supply the car. You would need to agree with your supplier principal who will give the information required by the DSRs to the consumer.

A ACRONYMS

ASA	Advertising Standards Authority
CCAS	Consumer Codes Approval Scheme
CMARs	Control of Misleading Advertisements Regulations 1988
DSRs	Consumer Protection (Distance Selling) Regulations 2000
DTI	Department for Trade and Industry
FSDMRs	Financial Services (Distance Marketing) Regulations 2004
OFT	Office of Fair Trading
SGSA	Supply of Goods and Services Act 1982
SOGA	Sale of Goods Act 1979
SSGA	Sale and Supply of Goods Act 1994
SSGCRs	Sale and Supply of Goods to Consumers Regulations 2002
TDA	Trade Descriptions Act 1974
UTCCRs	Unfair Terms in Consumer Contracts Regulations 1999

B USEFUL WEBSITES

Department of Trade Industry

www.dti.gov.uk

Her Majesty's Customs and Excise

www.hmce.gov.uk

Office of Public Sector Information

www.opsi.gov.uk

Her Majesty's Treasury

www.hm-treasury.gov.uk

Office of Fair Trading

www.offt.gov.uk

Trading Standards Institute

www.tradingstandards.gov.uk

C GLOSSARY

Business

Includes a trade or profession.

Consumer

Any natural person who, in contracts to which these Regulations apply, is acting for purposes which are outside his business.

Creditor

A person or entity to whom a debt is owed.

Distance contract

Any contract concerning goods or services concluded between a supplier and a consumer under an organised distance sales or service provision scheme run by the supplier who, for the purpose of the contract, makes exclusive use of one or more means of distance communication up to and including the moment at which the contract is concluded.

Durable form and written confirmation

Both of these terms refer to the confirmation of 'prior information' and further detail required by regulation 8 after the purchase has been made.

EEA Agreement

The Agreement on the European Economic Area signed at Oporto on 2 May 1992 as adjusted by the Protocol signed at Brussels on 17 March 1993(4)' 'performance' means fulfilment of ones obligations required by contract.

Principal

A person who empowers another to act as his or her representative.

Supplier

Any person who, in contracts to which these Regulations apply, is acting in his commercial or professional capacity.